

General Information Letter: A "qualified settlement fund" is defined as a corporation under Section 468B of the Internal Revenue Code and is therefore a corporation for Illinois income tax purposes.

April 30, 1999

Dear:

This is in response to your survey dated November 23, 1999 in which you request information concerning the treatment of Qualified Settlement Funds for Illinois income tax purposes. Please excuse the delay in responding. This letter will not only answer your survey request of November 23, 1998 **but will also update and clarify any former responses provided by the Illinois Department Of Revenue.** Department of Revenue ("Department") regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department

Although you have not specifically requested either type of ruling, the nature of your question and the information provided require that we respond only with a GIL.

In your letter you stated:

For the purpose of determining if a qualified settlement fund must file a return in Illinois what is Illinois's criteria for domicile?

After reviewing the pertinent portions of Title 26 of the United States Code, i.e. the Internal Revenue Code ("IRC") and the Illinois Income Tax Act ("IITA") the Department has concluded that for Illinois income tax purposes a qualified settlement fund should be treated as a corporation for taxing purposes but pay the tax rate applicable to trusts. The key reason for treating QSF's as corporations is the assertion in IRC § 468(B)(b)(5) of the IRC that QSF's are to be treated as a corporation for purposes of "Subtitle F." Among the chapters in Subtitle F is chapter 79 which is the definitions chapter of the IRC. The term "Corporation" is listed in the definitions chapter in Subtitle F and so when §468(B) states that for purposes of Subtitle F a QSF is a corporation, Illinois must accept that Congress intended QSFs to be defined as corporations for federal income tax purposes. The provision about QSFs being taxed at the maximum rate that applies to a trust is therefore only of use when determining the applicable tax rate.

Two methods exist by which this definition is reached. The first is that since the Illinois Income Tax Act ("IITA") does not define a QSF, §102 of the IITA requires the Department to use the definition provided by the IRC. Since the IRC, through §468B, defines a QSF as a corporation the Department must do so as well. Second, IITA §1501(4) defines a corporation as:

[t]he term "corporation" includes associations, joint-stock companies, insurance companies and cooperatives. Any entity, including a limited liability company formed under the Illinois Limited Liability Company Act, *shall be treated as a corporation if it is so classified for federal income tax purposes.* (emphasis added)

Since Illinois must accept any entity classified as a corporation under the IRC as being a corporation for Illinois income tax purposes, Illinois must accept the definition of corporation given under Subtitle F of the IRC.

As stated above, the language of §468B of the IRC points to the QSF being treated as a corporation for all but the actual tax rate imposed. Assuming this, the interplay of the Illinois Income Tax Act and the Internal Revenue Code requires that the Department treat a Qualified Settlement Fund as a corporation. Taxpayers would therefore file an IL 1120 and the Qualified Settlement Funds would be classified as "other persons" and therefore non-residents by virtue of §301(c) of the Illinois Income Tax Act. Any prior advice to the contrary is hereby overruled.

As QSF's are treated as corporations, the rules for domicile are the same as those for a corporation. Per IITA §301 a corporation is an "other person" which allocates income according to the rules enumerated in §§302-304 (pertinent portions enclosed). For purposes of domicile, the QSF would have its domicile wherever someone was managing it. Most likely, this would be the location of the fund administrator who would be keeping the books for the QSF. This, in general, would be the main criteria for domicile.

I hope that this has been helpful to you. If you have additional questions please feel free to contact me at the above address.

Very Truly Yours,

Charles Matoesian
Staff Attorney